

Application No. 09/688,213

Docket No. 00-VE15.17

**REMARKS**

Claims 1-28 are pending. Applicant thanks the Examiner for indicating that claim 17 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended claims 1-9, 18, and 25-28 to further define the invention. No new matter has been added. Applicant respectfully requests reconsideration of the pending claims in view of the preceding amendments and the following remarks.

Applicant has amended the specification to correct for minor spelling, typographical and grammatical errors. No new matter is added thereby.

**Claim Rejections Under 35 U.S.C. §101 and 35 U.S.C. §112**

Claims 1-9 and 25-28 were rejected under 35 U.S.C. §101 because the claimed invention was allegedly directed to non-statutory subject matter, and under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These rejections are respectfully traversed.

The Examiner maintains that claims 1 and 25 each comprise an apparatus and a method in the same claim. However, Applicant submits that functional limitations are completely proper in an apparatus claim and that the Examiner's rejections are improper in light of the requirements of MPEP 2173.05(g), which state in part that "A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." *Id.* Nonetheless, Applicant has amended claims 1 and 25 to more clearly define the structural and functional relationship between the elements. The amendments to independent claims 1 and 25 are being made as a procedural matter in an effort to pass the claims to issue. No substantive amendments have been made to the claims. Therefore, the scope of the claims remain unchanged.

Considering there have been no substantive rejections made to independent claims 1 and 25, or any of their dependent claims based on the prior art, claims 1-9 and 25-28 are in condition for allowance.

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**Claim Rejections Under 35 USC §102**

Claims 10-15 and 18-24 were rejected under 35 U.S.C. §102(e) as being anticipated by Kaffine et al. (U.S. Patent No. 6,654,914). Claim 18 has been amended to further define the invention. This rejection is respectfully traversed in view of the amendment to claim 18.

The present invention provides data communication services through an asymmetric digital subscriber line (ADSL) network. In addition to providing access to wide area networks (WAN's), such as the public Internet through Internet service providers (ISP's), network users have access to high quality vertical services within their local network. These services are separate from common forms of Internet traffic. This is accomplished by providing a technique and system for monitoring and testing isolated system elements at protocol layers at or above those used to define the customers connectivity. The isolated system elements enable the testing of congestion and throughput for each respective segment. As shown in Figure 7B of the instant application, the system includes a local services domain, which is logically separate from the wide area network. The local services domain includes a network services domain 33, and a vertical services domain 13, which are connected to a local services domain router 18, and servers 81 and 83. The local services domain is physically and logically separate from the Internet 11, the Internet server 93, and the ISP server 97. As further described in the specification:

The ADSL-based local access data network or "ADN" 10 provides access to two different network domains for communication services. The two network domains are logically separate. In most implementations, the first domain may be considered as a long distance or wide area domain, whereas the second domain is a local network domain. In the illustrated example, the ADN 10 provides access to a first domain in the form of a wide area internetwork, such as the public Internet, corporate local area networks (LANs), and the like, represented by the network cloud 11 for the ISPs. In accord with the invention, the ADSL-based local access network 10 also offers access to a wide variety of other IP-based services through a local data network 13 serving as the vertical services domain (VSD). The vertical services typically are high-end services requiring certain QoS levels and often having a certain local characteristic.

(Page 20, lines 11-24.)

Independent claims 10 and 22 are both directed to the above described data communications network and include a web server coupled to a local services domain that is logically separate from the wide area domain. For example, independent claims 10 and 22 recite, "a web server, coupled to the local services domain," for providing interactive communications with a customer subscribing to wide area domain access service. The primary reference cited by the Examiner does not disclose a web server coupled to a local

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services domain which is logically separated from the wide area network, as required by claims 10 and 22.

The Examiner contends that Kaffine discloses a, "web server coupled to a local services domain" as represented in Figure 1 by reference numerals 26 and 90. The Examiner claims further support of his contention at Col. 6, line 23-25, which states, "The enterprise 26 includes a router/firewall 88 and servers 90 and 92. The router/firewall 88 routes information to and from the servers 90 and 92 and the Internet 24." Applicant respectfully disagrees with this characterization of Kaffine in the context of the claimed invention.

The enterprise 26, as shown in Figure 1 and according to Kaffine, is merely a "connection for users at the customer premises 12 to interact with, e.g., world wide web sites, provided by the enterprise 26." (Kaffine, Col. 5, lines 19-22). This is distinctly different from a "web server coupled to a local services domain" that is logically separate from the wide area domain, as required by independent claims 10 and 22 of the present invention. In addition, it is clear from Figure 1 and the foregoing discussion that servers 90 and 92 of Kaffine are logically connected to the wide area domain, which is contrary to the teachings of the present invention.

Similarly, independent claim 18 is directed to a software product which enables the above described quality of service communications. Claim 18, as amended, recites "a test application, executable through a network server,... wherein the network server is coupled to a local services domain." As set forth above, Kaffine does not disclose a server coupled to a local services domain, as required by claim 18.

Accordingly, for at least these reasons, independent claims 10, 18, and 22 are allowable over the cited art and are in condition for allowance. Similarly, for at least the same reasons, claims 11-15, 19-22, and 23-24, which depend from independent claims 10, 18, and 22, respectively, are also in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the rejection.

#### **Claim Rejections Under 35 USC §103**

Claim 16 is rejected under 35 U.S.C. §103(a) as being unpatentable over Kaffine et al. (U.S. Patent No. 6,654,914) in view of Rekhter (U.S. Patent No. 5,917,820). This rejection is respectfully traversed.

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Independent claim 16 is directed to a system for providing data communication services through an asymmetric digital subscriber line (ADSL) network. As set forth above, Kaffine does not disclose a web server coupled to a local services domain that is logically separate from a wide area domain. The addition of Rekhter does not cure this deficiency in Kaffine. Therefore, claim 16 is allowable for at least the same reasons as set forth above. Applicant respectfully requests that the rejection be withdrawn.

### CONCLUSION

Reconsideration and allowance are respectfully requested. In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 07-2347, under Order No. 00-VE15.17 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to such deposit account number.

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Respectfully submitted,

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